FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2428 OF 2006

Office notes, office Memoranda of Coram, appearances, Court's orders or directions & Registrar's orders.	Court's or Judge's Orders

Shri Jehangir Khajotia i/b G. Kulkarni for petitioner

Mrs. M.M.Deshmukh, APP

CORAM: SMT. RANJANA DESAI, J.

DATED:-17/11/2006

P.C.:-

The petitioner has challenged in this petition order dated 6/10/06 passed by the Sessions Court Mumbai dismissing his revision application filed against the order passed by the learned Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai issuing process under Section 138 and under Section 140 of the Negotiable Instruments Act.

I have heard Mr. Jehangir the learned advocate for the petitioner at considerable length. He submitted

that the learned Sessions Judge has erred in dismissing the revision application. He submitted that the complaint does not disclose that at the relevant time the petitioner was incharge of the day to day conduct and business of the company. Relying on several judgments of the Supreme Court and more particularly the judgment of the Supreme Court in **S.M.S Pharmaceuticals Ltd. v. Neeta Bhall & Anr., AIR 2005 SC 3512** the learned counsel contended that, therefore, the complaint deserves to be quashed.

I am unable to accept the submission of the learned counsel. The learned Sessions Judge has rightly observed that contents of paragraph 3 of the complaint are sufficient to hold that the petitioner was incharge and was responsible for the conduct of accused 1 Behham Securities Pvt. Ltd. It is stated in paragraph 3 that during the period September 1999 to June 2000 the complainant company has done some business with accused 1, through accused 2 and 3. Accused 3 is

the present petitioner. It is also stated that accused 3 is a senior employee and authorised signatory of accused 1 company. It is also stated that accused 3 issued a letter to the complainant company dated 24th June, 2000 acknowledging indebtedness. How far these allegations are true only evidence can tell. For that purpose evidence will have to be adduced. This is not a case where complaint can be quashed.

Hence the petition is dismissed.

JUDGE.